

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AKIVA ISRAEL,  
Plaintiff,

v.

ROBERT SALINAS, et al.,  
Defendants.

Case No. [24-cv-08818-JD](#)

**ORDER**

Re: Dkt. Nos. 41, 42, 43, 44, 46, 47

Plaintiff, a state prisoner, filed a pro se civil rights complaint under 42 U.S.C. § 1983. The Court granted and denied in part defendants' motion to dismiss on exhaustion grounds. Several defendants were dismissed, and the remaining defendants were ordered to file a dispositive motion in 90 days. Plaintiff has also filed several motions to appoint counsel and to modify the discovery schedule. Defendants filed a motion to compel plaintiff to attend and meaningfully participate in her deposition, following three unsuccessful attempts to depose her.

**Appointment of Counsel**

Plaintiff requests the appointment of counsel for the limited purpose of representing her at the deposition. The Ninth Circuit has held that a district court may ask counsel to represent an indigent litigant only in "exceptional circumstances," the determination of which requires an evaluation of both (1) the likelihood of success on the merits, and (2) the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Plaintiff has competently presented her claims, successfully opposed a motion to dismiss, and sought discovery from defendants. Plaintiff has also competently litigated another case in this Court. The issues at the deposition are not complex and it is too early in this case for the Court to determine the likelihood of success on the merits.

Defendants note that plaintiff was deposed in two other federal civil rights cases since August 2025, ably defending herself and objecting multiple times. Dkt. No. 45, Exs. H, I. The request for appointed counsel is denied.

### **Motion to Compel Deposition**

Defendants say that they have unsuccessfully attempted to depose plaintiff on three separate occasions. On the first attempt, plaintiff said she was ill. Dkt. No. 46 at 3. The deposition was rescheduled the following week. *Id.* On the second attempt, plaintiff again said she was ill. *Id.* The deposition was rescheduled for the following week where plaintiff refused to participate without her own counsel, stating that she believed the deposition was, “being conducted in bad faith or that was done in manner that unreasonably caused oppression, noise, and embarrassment. . . .” *Id.* Ex. F at 6. Defendants note that in another case in this Court, plaintiff’s deposition in June 2025, had to be rescheduled due to plaintiff’s mental state. *Israel v. Tomlinson*, Case No. 24-cv-3718 JD, Dkt. No. 39-1 at ¶ 12. Defendants note that during the times when plaintiff stated she was too sick to be deposed, she was completing numerous motions in other cases in this District and the Eastern District. Dkt. No. 46 at 5.

The motion to compel is granted. Plaintiff is advised that defendants are entitled to examine her under oath about her claims and allegations. Defendants may schedule a deposition. The Court expects plaintiff to sit for the deposition and answer defendants’ questions as required under the Federal Rules of Civil Procedure. If plaintiff does not do that, the Court will impose an appropriate sanction. Sanctions may take the form of issue or claim preclusion, evidentiary preclusion, or outright dismissal of the case.

For the foregoing reasons:

1. The motions to appoint counsel (Dkt. Nos. 41, 42, 47) are denied.
2. Plaintiff’s motions to continue discovery (Dkt. No. 43, 44) are granted and she may continue seeking discovery from defendants.
3. Defendants’ motion to compel plaintiff’s deposition (Dkt. No. 46) is granted. The parties are directed to set a date for the deposition within 45 days of this order. If plaintiff does not participate and answer defendants’ questions, the Court will impose an appropriate sanction

1 that could include outright dismissal of the case.

2 4. Plaintiff was previously instructed to provide more information to effectuate  
3 service on defendant Freeman. Dkt. No. 40. The time to provide additional information has  
4 passed and plaintiff has not addressed the issue. Defendant Freeman is dismissed without  
5 prejudice for failure to serve pursuant to Federal Rule of Civil Procedure 4(m).

6 **IT IS SO ORDERED.**

7 Dated: December 23, 2025

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11 JAMES DONATO  
12 United States District Judge  
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United States District Court  
Northern District of California